

FILED

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
CRIMINAL DIVISION

2013 SEP 20 A 11:40

CLERK OF COURTS  
CUYAHOGA COUNTY

STATE OF OHIO

CASE NO. CR-571014

Plaintiff,

JUDGE PATRICIA A. COSGROVE

(Sitting by Assignment)

v.

THOMAS CASTRO,  
ANTHONY CALABRESE,  
MARC DOUMBAS,  
GILES TIMOTHY MARSHALL

ORDER

**Defendants.**

The Defendants, individually, and as a group, have filed a motion to disqualify the Cuyahoga County Prosecutor's Office from prosecuting this case. The State filed a brief in opposition to Defendants' motion to disqualify. All Defendants filed supplemental motions to disqualify the Prosecutor's Office and the State has filed a brief in opposition. On April 5, 2013, the court conducted a hearing on Defendants' motion to disqualify the Cuyahoga County Prosecutor's Office. After the hearing, Defendants counsel filed a supplemental motion to disqualify the Prosecutor's Office. On July 19, 2013, the court conducted a hearing on the supplemental motions to disqualify the Prosecutor's Office.

The court will recount only the salient facts of this case as it pertains to the Defendants' motion to disqualify counsel. The indictment alleged that the Defendants engaged in a pattern of corrupt activity (RICO) by attempting to bribe two victims of sexual assault to write letters to the trial judge requesting that Thomas Castro, the named defendant in the case, be considered for community control with an alleged offer of monetary consideration to be given to the victims and a third-party contacting them on the Defendants' behalf to make the sexual assault case go away. After Castro was indicted, he retained Marc Doumbas as one of the attorneys to represent him in the sexual assault case (CR 557475). Assistant Prosecutor Anna Faraglia represented the Cuyahoga County Prosecutor's Office in that case.

One of the victims in the sexual assault case, (hereinafter referred to as Jane Doe I) is secretary in the Civil Division of the Cuyahoga County Prosecutor's Office. According to documents filed

with the court, Attorney Timothy Marshall contacted Trina Fenn, a former employee who was then employed by the Cuyahoga County Prosecutor's Office to have lunch with him. On April 19, 2012, Attorney Marshall, Attorney Giles Timothy Marshall, Mary O'Toole, also a former employee of Marshall, and James Davidson, a retired police commander, had lunch at the Blue Point Grille. The State claims that the alleged bribe regarding Jane Doe I was mentioned by Mr. Marshall with a request being made to Ms. Fenn to communicate the offer to Jane Doe I. Fenn, who works in a different division than Jane Doe I mentioned this to her approximately six to eight weeks after the luncheon. Fenn was interviewed by Detective Remington of the Cleveland Police Department on June 25, 2012 and on November 13, 2012.

On October 17, 2012, Jane Doe II came forward and alleged that an attorney that had previously represented her in a civil protection case, Hector Martinez, told her that he had received information from Castro's business attorney, Harvey Bruner, who communicated that Defendants were allegedly offering \$10,000 or more if she would write a letter to Judge Russo asking that he sentence Castro to probation. Jane Doe II turned down the alleged bribe and gave the information to Assistant Prosecutor Anna Faraglia, who in turn, contacted the Cleveland Police Department. In Attorney Martinez's proffer to police, he stated that he was approached by Attorney Anthony Calabrese, a nephew of Marshall, and told him that he was interested in obtaining a favorable letter from Jane Doe II to keep Castro out of jail. Calabrese allegedly told Martinez that there was a similar offer made to Jane Doe I. Defendants deny that they made bribe offers to anyone and assert even if these statements were made, they were an attempt to negotiate a possible settlement of any civil case that might be filed in the future.

On October 17, 2012, Castro pleaded guilty to two counts of Sexual Battery pursuant to a plea negotiation between the Defendant and the State. The trial court, Judge John Russo presiding, accepted Castro's pleas of guilty and ordered a presentence investigation.

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On November 15, 2012, Timothy McGinty, the Cuyahoga County Prosecutor, wrote a letter to the Honorable Nancy A. Fuerst, in her capacity as the Administrative Judge for the court, requesting a continuance of Thomas Castro's sentencing that was scheduled the next day before Judge Russo for November 16, 2012. The date of Prosecutor McGinty's letter, November 15, 2012, coincides with the first date of hearings before the Grand Jury on the bribery charges as it relates to Jane Doe I and II. The court knows that this is the first time that evidence was presented as a result of reviewing certain Grand Jury testimony at the request of the Defendants. The court has filed a copy of the testimony given on November 15, 2012 under seal at the time this order was filed with the Clerk of Court.

In the letter, Cuyahoga County Prosecutor Timothy McGinty informed the court that it would be improper to go forward with the sentencing since Castro's attorney (Marc Doumbas) was one of the targets in the bribery investigation and he believed that proceeding with sentencing on

Castro may result in an ineffective assistance of counsel claim in the future. Judge Fuerst contacted Judge John Russo and he granted the request to continue the sentencing that was scheduled for November 16, 2012.

On or about December 18, 2012, Castro, Calabrese, Doumbas, and Marshall were indicted with Bribery in violation of R.C. 2921.02 (C) regarding the alleged bribes of Jane Doe I and Jane Doe II. Grand Jury and police investigations continued. The cell phone records of the Defendants were obtained through the execution of a search warrant. In addition, Attorney Hector Martinez, an attorney representing Jane Doe II gave Cleveland Police a proffer regarding a bribe allegedly made to him on behalf of his client, Jane Doe II, by Anthony Calabrese. On January 25, 2013, the Defendants were re-indicted on the Bribery charges and also indicted for violating R.C. 2923.01, Conspiracy (R.C. 2923.01), and Engaging in a Pattern of Corrupt Activity (R.C. 2923.32).

Before addressing Defendants' arguments on the merits, the court will review the standard in Ohio regarding the disqualification of an entire prosecutor's office in a case. When reviewing an allegation of a prosecutor's misconduct or disqualification, the reviewing court must review the matter on a case-by-case basis. The Eighth District Court of Appeals has held, in accordance with the majority of appellate districts in Ohio, that the "mere appearance of impropriety" is insufficient to warrant the disqualification of an entire prosecutor's office. See, *State v. White*, 2004 Ohio App. LEXIS 4773 September 30, 2004, HN 3, paragraph 25, Cuyahoga App. No. 82066, quoting; *State v. Waggaman* (Aug 20, 1997), Medina App. No. 96-CA-0078, 1997 Ohio App. LEXIS 3732; *State v. Bryant* (June 26, 1997), Meigs App. No. 96-CA-14, 1997 Ohio App. LEXIS 2952; *State v. Hiatt*, 120 Ohio App.3d 247, 697 N.E.2d 1025; *State v. Luna* (Sept. 2, 1994), Huron App. No. H-93-24, 1994 Ohio App. LEXIS 3807; *State v. Perotti* (May 15, 1991), Scioto App. No. 89-CA-1845, 1991 Ohio App. LEXIS 2393; *State v. Faulkner* (Aug. 20, 1990), Preble App. No. CA89-04-007, 1990 Ohio App. LEXIS 3550; *State v. Jacobs* (Jan. 3, 1990), Summit App. No. 14089, 1990 Ohio App. LEXIS 68.

A decree disqualifying a prosecutor's office should only be issued by a court when **actual prejudice** is demonstrated. (emphasis added). In making this determination, relevant factors may include: (1) the type of relationship the disqualified prosecutor previously had with a defendant, (2) the screening mechanism, if any, employed by the office, (3) the size of the prosecutor's office, and (4) the involvement the disqualified prosecutor had in the case. Prejudice will not be presumed by an appellate court where none is demonstrated. *Id.* *State v. White*, HN 4, *State v. Freeman* (1985), 20 Ohio St.3d 55, 485 N.E. 2d 1043. "The vicarious disqualification of an entire prosecutor's office should be allowed only when actual prejudice is demonstrated." *State v. Vidu* (July 23, 1998), Cuyahoga App. Nos. 71703 & 71704, 1998 Ohio App. LEXIS 3390 at \*10. Both the State and Defendant cite to holdings in cases in California in support of their positions. However, California law, unlike the law in Ohio, provides that an

‘appearance’ of a conflict of interest is sufficient to warrant disqualification of a prosecutor and there is no need to demonstrate an actual conflict of interest or prejudice. *California Pen. Code Sect. 1424. People v. Cannedy*, 176 Cal. App. 4<sup>th</sup> 1474; 98 Cal. Rptr. 3d 596; HN 2, 2009 Cal. App. LEXIS 1410.

R.C. 2941.63 provides that a court of common pleas, whenever it is of the opinion that the public interest requires it, may appoint an attorney to assist the prosecuting attorney in the trial of a case pending in such court. A decision to appoint a special prosecutor is not mandatory but discretionary under this statutory provision. *State v. Judd* (Dec. 20, 2007), 2007 WL 4442651 (Ohio App. 8 Dist.), *State v. Adams* (1980) 62 Ohio St. 2d 151, 157. The court will now address the major arguments made by the Defendants in reference to the disqualification of the Cuyahoga County Prosecutor’s Office in the bribery case.

**Anna Faraglia** - Utilizing the criteria delineated by the 8<sup>th</sup> District Court of Appeals in *State v. White, supra.*, and the majority of other Ohio appellate court districts: 1) The court finds there is no type of existing or past relationship between the Defendants and the Prosecutor’s Office; 2) At the hearings on the motion to disqualify, the Prosecutors handling the bribery case represented to the court that Assistant Prosecutor Faraglia has had no role in the screening process in the Grand Jury investigation or subsequent prosecution of the bribery case. The court was able to verify that she had no role in presenting the case to the Grand Jury as a result of reviewing in-camera minutes of the Grand Jury proceedings at the Defendants’ request; 3) The Cuyahoga County Prosecutor’s Office is a large office and employs 337 including 207 assistant prosecutors; and, 4) The Defendants have not demonstrated that Prosecutor Faraglia had any involvement in the bribery case other than reporting to law enforcement officials the second-hand information given to her by others regarding the alleged bribes. She did not witness any of the conduct and has no personal knowledge of the alleged bribes. As stated previously, the “appearance” of a conflict of interest is insufficient in Ohio to disqualify an entire prosecutor’s office and prejudice cannot be presumed. *Id. White*. Defendants also cite to the Ohio Rules of Professional Conduct in support of their claim. *The Ohio Rule of Professional Conduct 3.7* provides in relevant part:

A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless one or more of the following applies:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case;
- (3) the disqualification of the lawyer would work substantial hardship on the client.
- (c) A government lawyer participating in a case shall not testify or offer the testimony of another lawyer in the same government agency, except where division (a) applies or where permitted by law.

The Ohio Rules of Professional Conduct are not intended to create a new standard for disqualification of counsel that supplants case law and are advisory in nature. *Prof.ConR., Scope sect. 1.0* (20) sets forth the scope of the rules and provides that *even* if there is a violation of the rules by an attorney it does not create a legal presumption that a legal duty has been breached or warrant disqualification of a lawyer in pending litigation.

Although Defendants list Attorney Faraglia on their witness list, this is not evidence of a conflict of interest that would warrant the disqualification of an entire prosecutor's office. Subsequent to Castro pleading guilty, she was advised by Jane Doe I that an alleged bribe offer had been communicated to her by Trina Fenn. Faraglia spoke with Ms. Fenn and contacted the Cleveland Police Department so they could interview Fenn. Apart from getting the second-hand information from the two sexual assault victims and receiving information (again second-hand) from Attorney Martinez that he had received an alleged bribe offer from the Defendants, Prosecutor Faraglia had no involvement in this case. At the hearings on disqualification, the defense presented no evidence that she was involved in the Grand Jury bribery investigation or that she has had any involvement in the prosecution of this case.

Prosecutor Faraglia has no first-hand knowledge of the alleged bribe of either victim and only knows what she was told by others. *Ohio Evid. R. 602* mandates that in order for a witness to be competent to testify, the witness must have personal knowledge of the matter. It is highly doubtful that Defendants can establish competency under Evid. R. 602. *See, also, Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707. This evidence is obtainable from the reporting parties that have direct and first-hand knowledge. The Defendants have failed to show that the proposed testimony is either material or relevant to the issues being litigated and the evidence is clearly obtainable elsewhere. *Puritas Metal Prods., Inc. v. Cole*, 9<sup>th</sup> Dist. Nos. 07 CA009255, 07CA009257, 07CA009, 2008-Ohio4653.

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The next argument advanced by Defendants as to why the motion to disqualify should be granted is that the testimony of Faraglia is necessary since it may potentially be used to impeach several of the State's witnesses. Impeachment, alone, is legally insufficient to justify calling a prosecutor as a witness where any information the prosecutor has is cumulative. *State v. Pettit*, 1<sup>st</sup> Dist. No. C-98021, 1999 WL 12759. Although, the Defendants would like to characterize her testimony as being on a "contested issue", once the alleged criminal conduct was reported to her she put the witnesses that had direct knowledge of the alleged bribes in contact with the Cleveland Police Department. She has had no role in the Grand Jury investigation or the prosecution of the bribery indictment. Again, the court verified this by reviewing the Grand Jury minutes of key witnesses at the defense request. The court finds no violation of the Ohio Rule of Professional Conduct 3.7. As previously mentioned earlier in this opinion, even if this court found a conflict of interest, (that it does not), a violation of the rules of Professional Conduct does not trigger a disqualification of an attorney or firm from a pending case. *Prof.ConR. Scope*

sect., 1.0 (20). The rules are merely advisory in nature. Defendants cannot invent a conflict of interest to justify disqualification where none exists. Defendants have not met their burden to establish a conflict of interest that results in actual prejudice to the Defendants in the case.

**Prosecutors, McGinty, Soucie, O'Malley, and Meyer** – Some of the Defendants have listed the names of these prosecutors on their witness list as possible witnesses at trial. At the hearing on the Defendants' supplemental motion for disqualification, Defendants advanced several theories why they would like to call the above named individuals as witnesses. The first reason given by the Defendants was to have the prosecutors testify about the office's policy of voluntary recusal on case. This "issue" is neither material or relevant to the ultimate issue (i.e. whether bribery was committed) and that the testimony cannot be obtained elsewhere. *Id. Puritas Metal Prods., Inc.*

Another reason advanced by Defendants is that some of the above listed prosecutors had conversations with some of the State's witnesses so they might be called by the defense to impeach those statements. As with Prosecutor Faraglia, impeachment, alone, is not a sufficient reason to justify calling a prosecutor as a witness where any information the prosecutor has is cumulative. *Id., State v. Pettit*. None of these prosecutors witnessed the alleged bribes and have no direct or first-hand knowledge of the truth or veracity of the charges.

Defendants next argue for disqualification of the Prosecutor's Office because the the Cuyahoga County Prosecutor's Office has evidenced an animus against the Defendants by concealing information and/or re-indicting the Defendants under an engaging in a pattern of corrupt activity theory. Both in Defendants' briefs and in oral argument, they suggest that the Cuyahoga County Prosecutor's Office entered into a plea negotiation in the sexual assault case knowing that the Defendants were under investigation for bribery.

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The genesis of this last argument emanates from statements made during pre-trials in the sexual assault case then pending before Judge John Russo. On January 24, 2013, Judge Russo expressed concerns as to whether the Prosecutor's Office negotiated a plea with Castro while it knew that bribery charges may be pending. (TOP at 19:2-19:7). Assistant Prosecutor Meyer responded that although rumors and allegations had been made, there was no confirmed evidence that we had as of late October, early November. (TOP at 19:9-19:13). If such an allegation were true, it could form the basis for an ineffective assistance of counsel claim in the future or result in a motion by the Defendant to withdraw his guilty plea in the event that the Defendant did not agree with the judge's sentence.

Ironically, as a result of the Defendants' motion to disclose the testimony of some of the witnesses that appeared before the Grand Jury, this court conducted in-camera review of portions of the Grand Jury testimony. This Grand Jury minutes support the State's representations to

Judge Russo that the Defendants were not under investigation for bribery until after Castro's plea was entered on October 27, 2012. According to the court's review of the Grand Jury testimony, the first witness in the bribery investigation testified on November 18, 2012. This was the same day that prosecutors brought forth the allegations to Judge Russo in a pretrial that the Defendants, including one of Castro's attorneys, were targets in a bribery investigation. The court has filed under seal a copy of the Grand Jury testimony that commenced the bribery investigation. It is apparent from the transcript that November 18, 2012 was the first day of testimony as the Prosecutors introduced themselves to the Grand Jury and described the purpose of the investigation. Although, the Cleveland Police Department had interviewed Trina Fenn in June of 2012, the second alleged bribe offer to Jane Doe II did not surface until after Castro pled guilty on October 27, 2012.

**Trina Fenn & Jane Doe I.** – Defendants allege that there is a conflict of interest resulting in actual prejudice to the Defendants because, Trina Fenn, a former employee of the Prosecutor's Office support staff (Criminal Division) and Jane Doe I, a victim of sexual assault in Castro's case, who was and continues to work as support staff in another division of the Prosecutor's Office are potential witnesses in this case. Neither of these individuals is an attorney subject to the Ohio Professional Rules of Conduct. On January 6, 2012, the Cuyahoga County Grand Jury indicted Thomas Castro in CR-557475 for rape and sexual battery involving two victims, referred to in this opinion as Jane Doe I and Jane Doe II.<sup>4</sup> On June 21, 2012, Jane Doe I contacted Detective Jodi Remington with the sex crimes unit of the Cleveland Police Department. Jane Doe I related that Fenn conveyed a bribe offer allegedly made by Defendants to Fenn during a luncheon at the Blue Point Grille on April 19, 2012.

After Castro's guilty plea to two counts of Sexual Battery on October 27, 2012, but before his sentencing scheduled for November 16, 2012, Jane Doe II, came forward and stated that she had also received an alleged bribe offer. Detective Remington interviewed Jane Doe II on November 5, 2012. Jane Doe II informed Detective Remington that Hector Martinez, who represented her for purposes of obtaining a civil protection order against Castro had contacted her shortly after Castro pled guilty and told her that he received a bribe offer from Castro's business attorney. Martinez texted Jane Doe II about alleged offers to increase the bribe amount if she would write a letter to the sentencing judge asking that Castro receive community control. On November 5, 2012, Jane Doe II met with Detective Remington, gave her a statement, and permitted the detective to download the contents of her phone, including her text messages from Martinez. On December 20, 2012, Hector Martinez gave a voluntary proffer to police.

Defendants have produced no Ohio case precedent or precedent from any other State mandating that a prosecutor disqualify their entire office because a witness was or is currently employed by the office. In addition to the Ohio cases cited earlier in this opinion, courts in other states have held that disqualification of an entire prosecutor's office is not warranted when a

defendant calls an employee of the prosecutor's office as a witness. *E.g., State v. Irizarry*, 271 N.J.Super.577, 600, 639 A.2d 305 (N.J.1994). Even, in California, where the test for disqualification of a prosecuting attorney is not based on actual prejudice but only on an "appearance" of a conflict of interest, courts have held that merely because an employee may be a potential witness and credibility of that witness may have to be argued by the prosecuting attorney, is not a sufficient reason by itself to disqualify an entire prosecutor's office. *People v. Merritt*, 19 Cal.App.4<sup>th</sup> at 1580, 24 Cal.Rptr.2d 177.

**Miscellaneous Reasons For Disqualification** - The court will address other reasons argued by some of the Defendants' counsel regarding the issue of disqualification of the Prosecutor's Office. Defendants claim that Prosecutor McGinty must disqualify himself and his office in this case because he previously served on the Cuyahoga County Common Pleas bench with Judge Anthony O. Calabrese, Jr., Mr. Calabrese's father. They further argue that since Judge Calabrese who is now an appellate judge on the 8<sup>th</sup> District Court of Appeals reversed some of McGinty's decisions while he was serving on the Common Pleas bench is a reason to presume prejudice on the part of the Prosecutor. This argument has no merit. Judge Calabrese's decisions could not be rendered unilaterally as it takes at least three judges to affirm or reverse a decision by a lower court.

Another argument raised by Defendants relates to the fact that the Defendants were indicted on supplemental charges of Engaging in a Pattern of Corrupt Activity. They allege that the additional charge evince prejudice on the part of the Prosecutor's Office. The court has already discussed the timetable of the Grand Jury investigation and as of January 2013, the Grand Jury was still hearing evidence of the alleged conspiracy while the Cleveland Police were continuing their investigation. In order for an indictment to issue, it was necessary for the Grand Jurors to find probable cause that conspiracy and RICO offenses had been committed by the Defendants. Defendant Calabrese, in particular, argues that he is the only person indicted out of the original corruption probe for the same conduct under State and Federal law. The court is not persuaded by this argument. The Grand Jury found probable cause to indict the Defendant and there is no issue of double jeopardy with dual sovereigns. *Moore v. Illinois*, 55 U.S. 13, 14 L. Ed. 306 (1852), *Heath v. Alabama*, 474 U.S. 82, 89, 106 S.Ct. 433, 483 (1985).

Another claim by Defendants for disqualification of the Prosecutor's Office was the State's slow compliance in the past with defense discovery requests. The court finds this argument moot for the following reasons. First, all of the defense attorneys signed an acknowledgment of the receipt of discovery from the State in this case on February 21, 2013. This discovery included the statements of Jane Doe I, Jane Doe II, Trina Fenn, and Hector Martinez. Additional discovery was thereafter provided by the State to Defendants. Second, at the time of the hearing on the supplemental motion for disqualification held on July 19, 2013, with the exception of the defense request for an in-camera inspection of some Grand Jury testimony, the State and Defendants



represented that all discovery issues had been resolved. At the time of the second hearing, one of the Mr. Doumbas' attorneys, Attorney Maloney, a former prosecutor, said he was "surprised" to learn that Trina Fenn had testified before the Grand Jury. However, Attorney Maloney acknowledged in the pretrial conference held on December 18, 2012 before Judge Russo that he was aware of the accusations made by Ms. Fenn in June 2012 and in fact had interviewed witnesses that were present when the so called bribe offer was made at a local restaurant. (TOP – December 18, 2012 pretrial, pages 8-9). The Defendants have had this information for at least ten months and have failed to show that they have been prejudiced.

In a separate motion, Defendants have requested disclosure of the Grand Jury testimony of Trina Fenn. Defendants are entitled to discover Grand Jury testimony if they can demonstrate a "particularized need" for the testimony. *State v. Greer* (1981), 66 Ohio St.2d 139, 420. Grand Jury proceedings are secret, and an accused is not entitled to inspect grand jury transcripts unless the ends of justice require it and there is a showing by defense that a particularized need for disclosure exists which outweighs the need for secrecy. *Greer*, paragraph two of the syllabus, citing and approving *State v. Patterson*, 28 Ohio St.2d 181. The court has reviewed Ms. Fenn's testimony before the Grand Jury and finds that portions of her testimony may be exculpatory to the defense, establishing a particularized need for the information that outweighs the necessity for secrecy of the proceedings. In the interests of justice, the court orders the State to furnish a transcript of Trina Fenn's testimony, forthwith, to Defendants' counsel.

Defendant Marshall attempts to raise a conflict of interest in reference to Robert DeSimone, who has been an investigator with the Cuyahoga County Prosecutor's Office since May 28, 2013. In an affidavit filed with the court, Mr. DeSimone states that prior to accepting employment with the Prosecutor's Office, Attorney Maloney who represents, Marc Doumbas, asked him to witness his interview of Attorney Harvey Bruner. Bruner, allegedly was contacted by Attorney Marshall who asked him talk to Jane Doe I. Mr. DeSimone avers in his affidavit that he has not divulged to anyone the contents of the interview he attended at Attorney Maloney's request. The court finds the argument of alleged prejudice, to be spurious, at best. The Defendants were indicted on January 27, 2013 for Bribery and RICO violations. DeSimone did not even commence his employment with the Prosecutor's Office until May 28, 2013. The defense has not produced one shred of evidence to show that Mr. DeSimone's sworn affidavit is incorrect and that he divulged confidential information to anyone. The court orders, and would expect, Mr. DeSimone to continue to keep confidential any information he learned as a result of witnessing Mr. Bruner's statement to Defendants' counsel.

Defendant Calabrese also claims prejudice since his residence was subjected to a search by SWAT team members in the early morning hours. Although, this was undoubtedly unnerving to the Defendant and his family, there is no evidence that the Prosecutor's Office orchestrated or directed the method of entry to execute the search warrant.

In conclusion, the court finds that the Defendants have failed to demonstrate that they would suffer "actual prejudice" by having the Cuyahoga County Prosecutor's Office remain on this case. In the absence of actual prejudice, the court will not grant the extraordinary remedy to disqualify the entire Cuyahoga County Prosecutor's Office from this case. The Defendants' motion to disqualify the Cuyahoga County Prosecutor's Office is denied.

IT IS SO ORDERED.



JUDGE PATRICIA A. COSGROVE

Sitting by Assignment

Ohio Constitution

Art. IV, Sect. 6

cc: Attorney Thomas E. Shaughnessy  
Attorney Michael P. Maloney  
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